

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LAKETA S. MILLER**  
Claimant

VS.

**LEAVENWORTH DETENTION CENTER**  
Respondent

AND

**NEW HAMPSHIRE INSURANCE CO.**  
Insurance Carrier

Docket No. **1,033,967**

**ORDER**

Respondent and its insurance carrier request review of the May 22, 2007 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

**ISSUES**

At the May 22, 2007 preliminary hearing, claimant requested medical treatment with Dr. Ketchum as well as reimbursement for unauthorized medical treatment of Dr. Edward Prostic. Respondent denied claimant suffered accidental injury arising out of and in the course of employment or provided timely notice.

After the preliminary hearing, the Administrative Law Judge (ALJ) entered an Order which designated a treating physician and ordered respondent to pay for unauthorized medical treatment with Dr. Prostic. The ALJ made no factual findings, nor any analysis of the issues. K.S.A. 44-534a(2) provides that upon a preliminary finding that a claim is compensable an ALJ may make a preliminary award of medical compensation. Consequently, it is implicit in the ALJ's order designating a treating physician that the underlying compensability issues of injury arising out of and in the course of employment as well as timely notice were determined in claimant's favor.

The respondent requests review of whether claimant's accidental injury arose out of and in the course of employment and whether claimant provided timely notice.

Claimant requests the Board to affirm the ALJ's Order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Laketa Miller began her employment with respondent in Tulsa, Oklahoma, in January 2000. She has held numerous jobs for respondent including work as an addiction treatment counselor in 2005. As a counselor, claimant used her hands and arms on a repetitive basis performing her work on a computer.

In May 2005 claimant began having problems with her hands. She notified her supervisor, Troy Blaton, and was advised to seek medical treatment with her own physician. Then in July 2005 claimant was transferred to a Kansas facility but she was still required to use her hands even though her job changed. Claimant testified her hands got worse so respondent sent her to Dr. Chet Strehlow in April 2006. An EMG performed in April 2006 was negative. She was taken off work from April 17, 2006, through August 1, 2006, and received temporary total disability compensation at \$467 per week. While claimant was off work she was treated with placing her hands in hot packs and then sent home to do hand exercises. Although claimant denied her condition improved, Dr. Strehlow released claimant to return to work on August 1, 2006, without any restrictions.

When claimant returned to work August 2006, she was placed in the control room which still involved repetitive use of her hands. Claimant had to push buttons in order to open cell doors and opened gates. Her symptoms increased so she asked to be placed in a different job on the floor but ended up using her wrist braces until she went on maternity leave as of December 5, 2006. On December 12, 2006, claimant delivered her baby. While on maternity leave her hands did not improve so she was referred by her family physician to an orthopedic surgeon, Dr. Brian Chalkin.

Claimant has not worked since December 5, 2006. She was on short-term disability until January 23, 2007, and then it was extended until March 5, 2007.

Q. And to get the long term disability, did you have to represent to them whether your problem was work-related?

A. Right. They got all the test results from all the doctors and they made the determination whether or not I was disabled or not.

Q. And you told them you thought it was work-related but you also told them that the work comp people had denied your claim?

A. That is correct. There's a form that you have to check to see if you even went through your job or work comp and I checked the form stating that I did advise them and they did deny me.

Q. And is it your understanding the workers' comp carrier denied your case at this point? Even though they originally accepted it, they denied it now because they say the problem is because of your pregnancy?

A. That is correct.<sup>1</sup>

On January 29, 2007, Dr. Chalkin performed a physical examination and diagnosed claimant as having bilateral thumb trigger fingers and bilateral carpal tunnel syndrome. He provided injections to her bilateral thumbs and prescribed wrist splints. He ordered an EMG that was performed in March 2007 and revealed carpal tunnel syndrome. Dr. Chalkin recommended bilateral carpal tunnel surgery.

On May 16, 2007, Dr. Edward Prostic examined and evaluated claimant regarding her upper extremities. Dr. Prostic opined claimant needed bilateral carpal tunnel release surgery. The doctor further opined, "Her employment is judged to be the major factor in her condition rather than her pregnancy."<sup>2</sup>

Claimant alleged repetitive injury from May 2005 through December 5, 2006. She was provided authorized medical treatment with Dr. Strehlow and received temporary total disability compensation. Although released to work after treatment the claimant's uncontradicted testimony was that she asked her supervisor for a different job because the work she was performing was hurting her hands. The claimant has met her burden of proof that she provided timely notice of injury to her hands.

Claimant was provided medical treatment and then released back to repetitive work with her hands. As she worked claimant complained to her supervisor that her job was hurting her hands and she requested a transfer. Instead of a transfer claimant was simply allowed to wear arm braces as she continued performing the same job. Her hand condition worsened but claimant then took leave to give birth. After the birth of her child claimant continued to experience hand pain and her family physician referred her to a specialist who diagnosed bilateral carpal tunnel syndrome. And Dr. Prostic attributed that condition to claimant's work and specifically discounted her pregnancy as causing the condition. This Board Member affirms the ALJ's determination claimant met her burden of proof that she suffered a work-related accident.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>3</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member,

---

<sup>1</sup> P.H. Trans. at 13-14.

<sup>2</sup> *Id.*, Cl. Ex. 1.

<sup>3</sup> K.S.A. 44-534a.

as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>4</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Steven J. Howard dated May 22, 2007, is affirmed.

**IT IS SO ORDERED.**

Dated this 31st day of July 2007.

---

BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant  
Michael R. Kauphusman, Attorney for Respondent and its Insurance Carrier  
Steven J. Howard, Administrative Law Judge

---

<sup>4</sup> K.S.A. 2006 Supp. 44-555c(k).